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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,763	09/01/2006	Itsuo Sakakibara	295157US0PCT	6356

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER	
DOAN, ROBYN KIEU	
ART UNIT	**PAPER NUMBER**
3732	

NOTIFICATION DATE	DELIVERY MODE
12/09/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary	Application No.	Applicant(s)	
	10/591,763	SAKAKIBARA, ITSUO	
	Examiner	Art Unit	
	Robyn Doan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 September 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12 and 14-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12 and 14-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's Amendment filed 9/16/09 has been entered and carefully considered. Claims 1-11 have been amended. Claim 13 has been canceled. New claims 14-17 have been added. Argument regarding the 35 U.S.C. 103 (a) rejections have not been found to be persuasive, therefore, claims 1-11, 14-17 are rejected under the same ground rejections as set forth in the office action mailed 6/17/09 and new ground rejections as set forth below.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 14, 15 recited "the treated hair has been further sprinkled with treatment powder, with ultrasonic vibrating means", however, the original disclosure failed to disclose the step of "further sprinkled with treatment powder, with ultrasonic vibrating means".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 is indefinite because it recited "prior to shaping vibrating the hair", however, there is no step of vibrating the hair in claims 1 and 2 to which claim 15 depends on.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3, 4, 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takehana (USP 6,526,988).

In regard to claims 1, 6, Takehana discloses a permanent treatment method comprising the essential claimed invention such as adhering a permanent treatment liquid having thioglycolic acid and cysteine concentration after shampooed (col. 6, lines 63-67, col. 2, lines 61, 62) the hair and a shaping step of pulling the hair while warming the hair (using the hair iron, col. 7, lines 2, 3), Takena fails to show the step of adhering the permanent treatment down to a position adjacent to the root of hair and pulling the hair with a force of 0.5kg/cm^2 or more. It would have been an obvious matter of the user's choice to have the permanent treatment adheres down to a position adjacent to

the root of the hair, since such step is inherently occurred in each time the user applied the permanent treatment to the user's hair to obtain a predictable result, such as straightening the hair. It would also have an obvious matter of design choice to construct a pulling step with a force of 0.5kg/cm² or more, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In regard to claim 3, 4, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the 7% by weight or less of thioglycolic and 7% by weight of cysteine, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In regard to claim 7, it would have been an obvious matter of choice to leave the hair with the treatment liquid thereon for 20 minutes or more, since such modification is well known in the art. In regard to claims 8-10, Takehana further show a step of vibrating the hair using an ultrasonic vibrating means (3). In regard to claim 11, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct an interval with respect to the oscillator an integer multiple of ½ of the wavelength of a ultrasonic wave, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In regard to claim 12, it would also have an obvious matter of design choice to have a temperature of the shaping step being 100ºC or more, since it has been held that where the general conditions of a claim

are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 2, 5, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takehana in view of Sakakibara (USP 5,958,393).

Takehana discloses the essential claimed invention as discussed above except for the step of sprinkling a treatment powder that adsorbs the permanent treatment liquid. Sakakibara discloses a permanent treatment method comprising a step of sprinkling a treatment powder that adsorbs the permanent treatment liquid (abstract). It would have been obvious to one having an ordinary skill in the art to modify the permanent treatment of Takehana with the sprinkling a treatment powder as taught by Sakakibara in order to adsorb the permanent treatment liquid. Also, it would have been an obvious matter of choice to one having an ordinary skill in the art at the time the invention was made to further sprinkle the treatment powder with the ultrasonic vibrating means as taught by Takehana in view of Sakakibara to enhance the purpose of adsorbing to the permanent treatment liquid.

Response to Arguments

Applicant has argued that the method claimed invention provides an unexpected result such as the newly grown hair (after the permanent treatment) has also a straight shape, whereas the newly grown hair of Takehana would not have reasonably expected with a straight shape. Applicant is noted that such arguments are merely opinions and lack of any evidence and facts. A showing of unexpected results must be presented such as showing a description of precisely what was tested, it must include the

invention as claimed and the closest prior art, a description of all test results such as the result of the test performed on the invention as claimed and the result of test performed on the closest prior art; further, an analysis of the test results must be submitted.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner, Art Unit 3732